

REBELLIOUS STRAINS IN TRANSACTIONAL LAWYERING FOR UNDERSERVED ENTREPRENEURS AND COMMUNITY GROUPS

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*In his 1992 book *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice*, Gerald López disrupted the conventional understandings of what it meant to be an effective poverty lawyer or public interest attorney. His critiques and prescriptions were aimed at litigators and lawyers similarly engaged in struggles for social change. His book did not address the role of progressive transactional lawyers. Today, transactional lawyers working in underserved communities are far more common. This Essay seeks to apply López's critiques to the work of those practitioners.*

*I argue here that transactional legal services, or TLS, on behalf of subordinated clients achieves many of the aims of the *Rebellious Lawyering* project. I separate TLS on behalf of individual entrepreneurs from a more collective TLS on behalf of community or worker groups. For practitioners working with entrepreneurs, the Essay observes that client power, control, and autonomy are more readily achieved, albeit through what López might describe as quite regnant practices. Those practices, I argue, are fully justified in this context.*

What TLS for entrepreneurs does not accomplish, though, is community mobilization, a downside that is regrettable but not a reason to eschew that kind of work. Collective TLS provides all of the upsides of entrepreneurial TLS while not sacrificing mobilization goals. That version of TLS, though, does present two of its own challenges, one triggered by the complexity and sophistication of the legal issues involved in many community economic development projects, and the second resulting from the nature of group representation.

INTRODUCTION

The “new paradigm”¹ for progressive lawyering offered, with great élan and texture, by Gerald López in his 1992 book, *Rebellious*

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¹ Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CALIF. L. REV. 1879, 1924 (2007) (describing the “new paradigm of social change and cross-racial solidarity” within progressive lawyering).

Lawyering: One Chicano's Vision of Progressive Law Practice,² has forever changed our understanding of the role lawyers play in their interactions with subordinated communities. So many dedicated poverty lawyers, struggling for justice for clients in desperate need of better living and working conditions, could not help but be taken aback by López's trenchant—and critical—description of their “regnant” practices.³ His insights and passionate pleas for more effective progressive lawyering practices spurred hundreds of published reflections and responses.⁴ The landscape of how progressive lawyers engage in their work would never be the same.⁵

Or, put more accurately perhaps, the landscape of how progressive lawyers *litigate* would never be the same. López wrote for, to, and about the litigators among us, and at the time he wrote the model of a public interest or legal services lawyer was primarily as a litigator.⁶ This characterization surely overstates the point, as many of the regnant lawyers about whom López wrote were seeking resolution of disputes, or effecting changes in institutions, through means other than lawsuits in courts. López did not *favor* litigation and courtroom justice, of course. Quite to the contrary—he lamented the common and widespread reliance on those measures emerging from lawyer-led strategies.⁷ But he described lawyers alongside clients engaged in disputes and struggles, and fighting what he referred to as the “good fight.”⁸

What López and his *Rebellious Lawyering* book did not address,

² GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992).

³ *Id.* at 25.

⁴ A Westlaw search of López's book and the term “regnant” produces 175 results. The López book itself has been cited in law reviews and journals (not counting this symposium) more than 525 times. (Westlaw search, June 23, 2016.)

⁵ See Sameer Ashar, *Deep Critique and Democratic Lawyering in Clinical Practice*, 104 CALIF. L. REV. 201, 208 (2016) (“[López's] progressive critique significantly altered public interest practice.”).

⁶ A classic early treatment of the role of lawyers captures poignantly the dispute-driven nature of legal practice. See William L.F. Felstiner, Richard L. Abel & Austin Sarat, *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 LAW & SOC'Y REV. 631 (1980-1981).

⁷ LÓPEZ, *supra* note 2, at 60-61.

⁸ *Id.* at 103 (describing one of the legal services lawyers in his accounts as loving “a good fight” on behalf of her clients). See also Ascanio Piomelli, *Sensibilities for Social Justice Lawyers*, 10 HASTINGS RACE & POVERTY L.J. 177, 190 (2013) (“As social justice lawyers, we are at our best when we fully internalize that our lawyering is not primarily about our own self-expression. It is about the vital end we seek: the survival, advancement, and flourishing of our clients and our communities. Our aim is not simply to ‘fight the good fight,’ but to win it.”); Carrie Menkel-Meadow, *Toward a Jurisprudence of Law, Peace, Justice, and a Tilt Toward Non-Violent and Empathetic Means of Human Problem Solving*, 8 UNBOUND: HARV. J. LEGAL LEFT 79, 79 (2012) (“For too long attaining ‘justice’ has been defined by fights, struggles and ‘winning’ rights.”).

and perhaps understandably so given the legal culture when he wrote,⁹ was the practice patterns of lawyers working alongside clients in transactional matters, engaged in organizational and business affairs. In this Essay, I want to test the fit of the López critique within the context of transactional lawyers—and, in particular, those progressive transactional lawyers dedicated to serving inner-city entrepreneurs, the creative businesspersons from underserved communities who hope to succeed in the local economy. Many more progressive lawyers work with entrepreneurs in 2016 than did so in 1992,¹⁰ and many of those lawyers do so with commitments similar to those of the pioneering legal services lawyers of the 1960s and 1970s. The question to be addressed in this Essay is whether, and if so how, the López critique applies to the “new economy”¹¹ lawyers whose clients need less advocacy and more sophisticated technical support.¹²

This Essay will proceed as follows. Part I describes the endemic context of the lawyering scene about which López wrote in 1992, as one enmeshed in resistance, and therefore calling upon strategic judgments crafted within the universe of litigation, if “litigation” writ large. To López, lawyering equates to problem-solving in the context of struggles within the pursuit of power, self-determination, and dignity.¹³ His stories, including his “stock stories,”¹⁴ emerge from that lens. His cutting critique of regnant lawyering¹⁵—the work so many of us did, and did so well, we thought—accepted the goals of those lawyers while envisioning far more meaningful strategies. Part II catalogues the paradigm-shifting messages López distilled from those

⁹ *But see* Ann Southworth, *Taking the Lawyer Out of Progressive Lawyering*, 46 *STAN. L. REV.* 213, 223-25 (1993) (criticizing López for neglecting the role of transactional lawyers).

¹⁰ *See* Susan R. Jones, *Alleviating Poverty—What Lawyers Can Do Now*, 40 *HUM. RTS.* 11 (2014).

¹¹ *See* J. Mark Phillips, *Entrepreneurial Esquires in the New Economy: Why All Attorneys Should Learn About Entrepreneurship in Law School*, 8 *J. BUS. ENTREPRENEURSHIP & L.* 59 (2014).

¹² This question has received some limited attention in the past, especially by Professor Ann Southworth, but has received little notice in recent years. *See* Southworth, *supra* note 9; Ann Southworth, *Business Planning for the Destitute? Lawyers as Facilitators in Civil Rights and Poverty Practice*, 1996 *WIS. L. REV.* 1121 (1996). *See also* Janine Sisak, *If the Shoe Doesn't Fit . . . : Reformulating Rebellious Lawyering to Encompass Community Group Representation*, 25 *FORDHAM URB. L.J.* 873 (1998).

¹³ *See* Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 *CLIN. L. REV.* 427, 478 (2000) (“At the core of López’s vision is the notion that lawyering fundamentally entails persuading others and that persuasion is a central aspect of everyday life.”).

¹⁴ Gerald P. López, *Lay Lawyering*, 32 *UCLA L. REV.* 1, 3 (1984) (“stock stories” are those “that help us interpret the everyday world with limited information and help us make choices about asserting our own needs and responding to other people”).

¹⁵ For a description of López’s conception of regnant lawyering, see text accompanying notes 38-51 *infra*.

struggles and the ways that lawyers had been taught to participate in them. López described the dangers of privileging lawyer expertise, of underestimating the wisdom and resourcefulness of the client community. He presented a vision of responses to the demands for control and dignity that did not need the law-on-the-books for their success. He emphasized the long view over a more crabbed and instrumental short view. And he persistently reminded readers of the centrality of client voice and the power of narrative.

Part III confronts the more central inquiry of this Essay. Understanding the López critique, and the values and habits he urges as part of a coherent and ethical progressive practice, how does his vision fit that of a transactional lawyer working with urban entrepreneurs, and do his criticisms apply equally well to them? The arena I focus on is that of the “suits” or the “wonks”—those corporate lawyers who (much like accountants, perhaps) assist emerging entrepreneurs to facilitate the economic and legal success of their private, for-profit businesses. The suits and the wonks aim to help entrepreneurs from disadvantaged backgrounds and neighborhoods to *succeed*.¹⁶ They use the law tactically and instrumentally, bringing a sophisticated level of expertise to the business planning of the startup founders and owners. Given that description, these lawyers seem, at first glance, to be as distant from López’s rebellious lawyers—Sophie, Amos, Martha¹⁷—as one can imagine. But that first impression is misleading. The discussion in Part III suggests that the goals of rebellious lawyering are quite often met elegantly, if concededly not perfectly, by the work of those technicians.

Having examined the López teachings within the context of small business entrepreneurship work, the Essay in Part IV turns to a different, but equally prevalent, model of progressive transactional practice—the lawyering for community-based organizations, including nonprofits and worker cooperatives. López has a lot to say to those lawyers, whose mission more closely resembles that of the “good fight” advocates described in *Rebellious Lawyering* and López’s other writing. Part IV describes the obvious benefits of the collective focus of group transactional work, with its responsiveness to community needs and leadership. But that discussion also uncovers two aspects of collective transactional work that complicate the rebellious lawyering goals—first, the worry about lawyer control of the more complex col-

¹⁶ See Alina Ball, *Disruptive Pedagogy: Incorporating Critical Theory in Business Law Clinics*, 22 CLIN. L. REV. 1, 48 (2015).

¹⁷ López describes three advocates whose commitment to community lawyering come closest to capturing his rebellious ideals. See LÓPEZ, *supra* note 2, at 30-31 (Sophie), 34-38 (Amos), 167-72 (Martha).

lective projects, and, second, the unavoidable tension for those lawyers to represent an organization while attending to the voices of the larger membership.

I. THE LITIGATION LENS OF THE *REBELLIOUS* LAWYERING PROJECT

In *Rebellious Lawyering*, along with his other writings from that period and since,¹⁸ López describes a lawyering world which captured well my work as a lawyer in the 1980s and early 1990s. My experience within poverty law was not atypical. After several years as a staff attorney and senior counsel at the Watts Office of the Legal Aid Foundation of Los Angeles, I continued a similar practice as a civil litigation clinical supervisor at the Boston College Legal Assistance Bureau. In law school, I had interned at two prominent public interest law firms in Los Angeles.¹⁹ I was deeply engaged in poverty law and public interest work, and I understood well the distinct, if related and complementary, layers of that work, including the “impact” litigation and campaigns of backup centers²⁰ and public interest law firms, and the direct, on-the-ground service work I engaged in as a staff attorney in Watts and as a supervisor in the civil clinic in Massachusetts.²¹ The work my colleagues and I did for poor clients, and for organizations or loosely-structured groups of poor residents, was essentially litigation-based. If we were not in court or before an administrative agency, we were employing alternative strategic methods to accomplish similar ends—to gain important benefits, or improvements, or progress for the individuals, groups, and communities we represented. In the

¹⁸ See, e.g., Gerald P. López, *An Aversion to Clients: Loving Humanity and Hating Human Beings*, 31 HARV. C.R.-C.L. L. REV. 315 (1996); Gerald P. López, *Living and Lawyering Rebelliously*, 73 FORDHAM L. REV. 2041 (2005); Gerald P. López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603 (1989); Gerald P. López, *The Work We Know So Little About*, 42 STAN. L. REV. 1 (1989).

¹⁹ I enrolled as a full-time extern at the Center for Law in the Public Interest in Santa Monica, and I worked for two summers and during two school years as an intern at Public Counsel, then a program of the Beverly Hills Bar Association.

²⁰ As a LAFLA attorney, I frequently collaborated on impact projects with the Western Center on Law and Poverty, a Legal Services Corporation-funded backup resource in Los Angeles. As a clinical instructor in Massachusetts, I worked regularly with the Massachusetts Law Reform Institute.

²¹ For a discussion of the then-conventional dual strategies of direct representation versus “impact” work, see, e.g., Marie A. Failinger & Larry May, *Litigating Against Poverty: Legal Services and Group Representation*, 45 OHIO ST. L.J. 1 (1984); Carrie Menkel-Meadow, *The Causes of Cause Lawyering: Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers*, in CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 31 (Austin Sarat & Stuart Scheingold eds., 1998); Mark Spiegel, *Legal Aid 1900 to 1930: What Happened to Law Reform?*, 8 DEPAUL J. FOR SOC. JUST. 199 (2015).

words of Ascanio Piomelli, we aimed “to win.”²²

López wrote about my world; his stories resonated with how I had experienced practice. Like for many of his readers,²³ his observations and prescriptions raised difficult questions for me, especially about how to reconcile the immediate, instrumental legal needs of those clients sitting in our waiting rooms with the long-range, and perhaps more fundamental, needs of the communities we sought to serve.²⁴ Those disagreements notwithstanding, López explored the world that I understood, even if not with the insights he shared with his readers.

Returning to the López book and articles in 2016, I see just how connected his visions—and my visions—were to the world of litigation and dispute-resolution. López describes “lawyering,” generically, as problem-solving within the context of disputes, injustices, and struggles, and always connected to stories.²⁵ López writes:

Contrary to popular belief, law is not a set of rules but a set of stories and storytelling practices that describe and prescribe social reality and a set of conventions for defining and resolving disputes. Law is not a collection of definitions and mandates to be memorized and applied, but a culture composed of storytellers, audiences, remedial ceremonies, a set of standard stories and arguments, and a variety of conventions about storywriting, storytelling, argument-making, and the structure and content of legal stories.²⁶

When problem-solving requires persuading others to act in a compelling way, we call it lawyering, whether the problem-solver is representing herself (self-help), a friend (lay lawyering), or a client

²² See note 7 *supra*.

²³ For a sampling of some of the critical reactions to López’s ideas, see, e.g., Anthony V. Alfieri, *Practicing Community*, 107 HARV. L. REV. 1747 (1994); Angelo N. Ancheta, *Review Essay: Community Lawyering*, 81 CALIF. L. REV. 1363 (1993); Cathy Lesser Mansfield, *Deconstructing Reconstructive Poverty Law: Practice-Based Critique of the Storytelling Aspects of the Theoretics of Practice Movement*, 61 BROOK. L. REV. 889, 929 (1995); William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455, 464-79 (1994); Dean Hill Rivkin, *Reflections on Lawyering for Reform: Is the Highway Alive Tonight?*, 64 TENN. L. REV. 1065, 1070 (1997); Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLIN. L. REV. 217, 249-57 (1999); Ann Southworth, *Lawyers and the “Myth of Rights” in Civil Rights and Poverty Practice*, 8 B.U. PUB. INT. L.J. 469, 472-73 (1999); Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLIN. L. REV. 157 (1994).

²⁴ Like others, I wrote about those questions. See, e.g., Paul R. Tremblay, *The Crisis of Poverty Law and the Demands of Benevolence*, 1997 ANN. SURV. AM. L. 767; Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L. J. 947 (1992); Paul R. Tremblay, *A Tragic View of Poverty Law Practice*, 1 D.C. L. REV. 123 (1992) [hereinafter Tremblay, *Tragic View*].

²⁵ See Southworth, *supra* note 9, at 220.

²⁶ LÓPEZ, *supra* note 2, at 43.

(professional lawyering).²⁷

López was not alone, in 1992, in perceiving lawyering for disempowered clients as essentially advocacy-driven.²⁸ But, read some twenty-five years later, López's descriptions appear rather narrow, missing a segment of the poverty law community whose aim is not to serve as advocates in struggles against authority structures, but to assist community members to establish asset-developing enterprises that might contribute to community—and personal—economic development,²⁹ including entrepreneurship,³⁰ or to create and manage community-based organizations.³¹ For much of the work that transactional lawyers in those settings accomplish for their clients, the “law” they rely upon is more functional and static than that envisioned by López. Transactional attorneys most often work precisely within established systems and within conventional authority structures to aid in compliance with regulatory schemes that are essential to the life of the client's enterprises.³² That orientation hardly seems “rebellious” in the ordinary sense of that word,³³ but, as we see below, the assistance provided by lawyers within those established protocols and systems accomplishes much of what López's rebellious mission urges progressive

²⁷ *Id.* at 39.

²⁸ One apt example might be the Theoretics of Practice Conference held at Hastings Law School in 1992. See Symposium, *Theoretics of Practice: The Integration of Progressive Thought and Action*, 43 HASTINGS L. J. 717 (1992). None of the twenty articles published within that Symposium issue addresses transactional lawyering directly. Virtually all of the articles examining lawyering practice and client interactions focus on litigation on behalf of underrepresented clients.

²⁹ For an overview of the emergence in recent years of transactional legal services in the entrepreneurship and community economic development arenas, see, e.g., Alicia Alvarez, *Community Development Clinics: What Does Poverty Have to Do with Them?*, 34 FORDHAM URB. L.J. 1269 (2006); Susan R. Jones & Roger A. Clay, Jr., *What Is Community Economic Development?*, in BUILDING HEALTHY COMMUNITIES: A GUIDE TO COMMUNITY ECONOMIC DEVELOPMENT FOR ADVOCATES, LAWYERS, AND POLICYMAKERS 3, 3-5 (Susan R. Jones & Roger A. Clay, Jr. eds., 2009).

³⁰ See, e.g., Dorcas R. Gilmore, *Expanding Opportunities for Low-Income Youth: Making Space for Youth Entrepreneurship Legal Services*, 18 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 321 (2009); Laurie Hauber, *Promoting Economic Justice Through Transactional Community-Centered Lawyering*, 27 ST. LOUIS U. PUB. L. REV. 3 (2007).

³¹ See, e.g., Susan D. Bennett, *Creating a Client Consortium: Building Social Capital, Bridging Structural Holes*, 13 CLIN. L. REV. 67 (2006); Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67 (2000); Michael Diamond & Aaron O'Toole, *Leaders, Followers, and Free Riders: The Community Lawyer's Dilemma When Representing Non-Democratic Client Organizations*, 31 FORDHAM URB. L.J. 481 (2004).

³² See Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLIN. L. REV. 195, 220-21 (1997); Southworth, *supra* note 12; Paul R. Tremblay, *Transactional Legal Services, Triage, and Access to Justice*, 48 WASH. U. J.L. & POL'Y 11 (2015).

³³ See Hauber, *supra* note 30, at 39 (“Some view non-litigation business based projects as less activist.”).

lawyers to achieve.

That progressive lawyers offer their services to entrepreneurs more often today is not in dispute. A more provocative inquiry, one which this Essay cannot explore, is to situate that development within the arc of progressive lawyering generally.³⁴ One plausible explanation would connect the perceived failings of impact litigation as a tool of social justice³⁵ to an increased openness to economic development as a source of community power,³⁶ and to view entrepreneurship as an important component of economic development.³⁷ If that hypothesis has any credible validity, the López conceptions may have contributed to the rise of progressive lawyering for startup entrepreneurs. That question remains for others to study.

II. THE *REBELLIOUS LAWYERING* CRITIQUE OF REGNANT LAWYERING

This Part briefly describes the central themes of López's dissatisfaction with prevailing poverty law and progressive lawyering practices, and his proposals for a more rebellious form of lawyering work. The proceeding Parts III and IV will then assess how the work of transactional lawyers contributes to the worries López airs or, alternatively, fosters the values and practices he hoped to see nurtured within progressive practice.

López envisions the lawyer as an advocate, and the client as an advocate.³⁸ Struggle against oppression and subordination calls for effective persuasion and strategic mobilization,³⁹ and *Rebellious Lawyering* altered prevailing visions of how such mobilization ought to

³⁴ For a concise but comprehensive review of the history of progressive movements in the United States, see Scott L. Cummings & Jeffrey Selbin, *Poverty Law: United States*, INT'L ENCYCLOPEDIA OF SOC. AND BEHAVIORAL SCI. (2015).

³⁵ See, e.g., ALAN K. CHEN & SCOTT L. CUMMINGS, PUBLIC INTEREST LAWYERING: A CONTEMPORARY PERSPECTIVE 222-32 (2013).

³⁶ See Jones, *supra* note 32.

³⁷ See Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 411 (2001); Steven H. Hobbs, *Toward a Theory of Law and Entrepreneurship*, 26 CAP. U. L. REV. 241, 297-98 (1997). But see Rashmi Dyal-Chand & James V. Rowan, *Developing Capabilities, Not Entrepreneurs: A New Theory for Community Economic Development*, 42 HOFSTRA L. REV. 8 39 (2014) (questioning the value of entrepreneurship as a means to address poverty and wealth insecurity).

³⁸ See Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLIN. L. REV. 147, 159-60 (2000).

³⁹ See, e.g., Ashar, *supra* note 1; Scott L. Cummings & Ingrid V. Eagley, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443 (2001); Jim Freeman, *Supporting Social Movements: A Brief Guide for Lawyers and Law Students*, 12 HASTINGS RACE & POVERTY L.J. 191 (2015); Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407 (1995); Quigley, *supra* note 23.

emerge. Working within that orientation of progressive lawyers representing clients to oppose oppression and to seek justice, López critiqued many of the well-meaning but ineffective practices of regnant lawyers. According to López, “regnant” lawyering is that set of practices employed by progressive lawyers that filter the struggles of subordinated people through the lens of professional ideologies and understandings.⁴⁰ López offers important and at times unsettling critiques of the regnant approach to poverty lawyering. Lawyers ought not to serve as leaders of the campaigns, and they cannot continue to exclude clients and community members from strategy development and advocacy efforts.⁴¹ Regnant lawyers privilege remedies and actions connected to courts and crafted from legal theories—not surprisingly—over those emerging organically from the lived experiences of subordinated people.⁴² Through their professional practices and training, progressive lawyers effectively isolate clients from one another, disempower those whom they seek to help, and leave clients alienated and unsatisfied.⁴³

López objects that regnant “[l]awyers litigate more than they do anything else.”⁴⁴ By that observation, he does not argue for more transactional legal work.⁴⁵ Instead, López resists perceiving problem-solving as best accomplished through courts and judicial orders, rather than through community engagement, organizing, and focused pressure.⁴⁶ Lawyers too often proceed alone, leading the crusades as he-

⁴⁰ LÓPEZ, *supra* note 2, at 23-24.

⁴¹ *Id.* at 231. See also Jennifer Gordon, *The Lawyer Is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CALIF. L. REV. 2133 (2007).

⁴² LÓPEZ, *supra* note 2, at 60. See also Austin Sarat & Stuart Scheingold, *What Cause Lawyers Do For, and To, Social Movements: An Introduction*, in CAUSE LAWYERS AND SOCIAL MOVEMENTS 1, 12 (Austin Sarat & Stuart Scheingold eds., 2006) (“[C]ause lawyers may, whether wittingly or unwittingly, parlay their expertise and their social capital to redirect the trajectory of the movement. In doing so, they may undermine the leadership and stifle the grassroots energies necessary for the success of the movement.”).

⁴³ LÓPEZ, *supra* note 2, at 70-71.

⁴⁴ *Id.* at 24.

⁴⁵ See Southworth, *supra* note 9, at 226 (“López’s examples of rebellious lawyering easily could have included lawyers providing technical legal services to various community organizations—tasks which would be consistent with López’s focus on collaborating but are not mentioned in his book.”). One of López’s fictional law firms, interestingly enough, is a for-profit firm representing small businesses, including on transactional matters. See LÓPEZ, *supra* note 2, at Chapter 3. Yet, when López introduces his readers to a lawyer working in that firm, the lawyer is assigned to take on a civil rights dispute involving police oppression and discriminatory conduct. *Id.* His narratives do not make mention of the work done by the transactional attorneys in the firm.

⁴⁶ LÓPEZ, *supra* note 2, at 115-16. López builds upon the work of several pioneering critics of the prevailing legal profession norms. See, e.g., Richard Abel, *Law Without Politics: Legal Aid Under Advanced Capitalism*, 32 UCLA L. REV. 474 (1985); Derrick Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976); Gary Bellow, *Turning Solutions into Problems: The Legal*

roes.⁴⁷ By relying on technical, strategically sophisticated approaches to effecting social change, lawyers miss the opportunity for empathy⁴⁸ and a more genuine connection to the felt lives of their clients.⁴⁹ With the inevitable demands that poverty lawyers face on their time and resources, daily practices become bureaucratic and rigid. Lawyers then ignore what is perhaps the most central commitment of good lawyering—attention to story, narrative, and the lived accounts of those who experience insubordination, exclusion, and oppression.⁵⁰ The regnant practice habit of reliance upon professional and technical expertise instead of client narrative leads to impoverished practices.⁵¹ Legal training effectively wrings critical sensibilities out of its subjects. The rebellious orientation aims to reintroduce those connections.

Let us consider López's vision in an advocacy context.⁵² Ehsan Rau is an attorney employed in a metropolitan legal services office. Rau interviews Allyson Pollard, an African American single mother of two young children who has received an eviction complaint after she missed paying her rent for three months. Pollard missed the payments because her child support payments, her only reliable source of income, stopped after a dispute with the father of her children about his visitation schedule. Rau is a well-trained and creative tactician, and she quickly recognizes several defenses to the landlord's complaint, as well as counterclaims that could offset the rent owed. Rau discovers a mishandled security deposit, a failure to provide adequate heat, and a violation of the state's law covering quiet enjoyment, trig-

Aid Experience, 34 NLADA BRIEFCASE 106 (1977); Peter Gabel & Paul Harris, *Building Power and Breaking Images: Critical Legal Theory and the Practice of Law*, 11 N.Y.U. REV. L. & SOC. CHANGE 369 (1983); Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049 (1970).

⁴⁷ LÓPEZ, *supra* note 2, at 23-24.

⁴⁸ For a discussion of the role of empathy when working with clients in need, see Stephen Ellmann, *Empathy and Approval*, 43 HASTINGS L.J. 991 (1992).

⁴⁹ López describes an imaginary nonprofit law firm, essentially a legal services organization, and observes its receptionist and its lawyers in their interactions with the struggling clients who seek assistance there. Through the eyes of the organization's new executive director, López deftly demonstrates how bureaucratic and disconnected the staff can appear to the members of its client community. LÓPEZ, *supra* note 2, at 87-102. For similar critical assessments of the operations of poverty law institutions, see, e.g., Marc Feldman, *Political Lessons: Legal Services for the Poor*, 83 GEO. L. J. 1529 (1995); Louise G. Trubek, *Embedded Practices: Lawyers, Clients, and Social Change*, 31 HARV. C.R.-C.L. L. REV. 415 (1996).

⁵⁰ LÓPEZ, *supra* note 2, at 70-82; see also Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485 (1994); Lucie E. White, *Pro Bono or Partnership: Rethinking Lawyers' Public Service Obligations for a New Millennium*, 50 J. LEGAL EDUC. 134 (2000).

⁵¹ LÓPEZ, *supra* note 2, at 190-92. See also Anthony V. Alfieri, *Impoverished Practices*, 81 GEO. L.J. 2567 (1993).

⁵² The story here is mine, not from López's book.

gered by the landlord's unauthorized entry into the apartment when Pollard is not home.⁵³ Rau prepares an answer, counterclaim, and discovery, and those papers postpone the eviction hearing for some time, easing Pollard's worry about impending homelessness and her family's possible stay in a shelter. Rau also includes a demand for a jury trial, which, even if later dismissed by the tenant, will extend the date for the court trial, meaning that even if she did not win the lawsuit Pollard would have some place to live for several more weeks.

Rau, as a committed legal services lawyer, guides Pollard through the litigation process just described, keeping her informed about the progress of the litigation, including providing copies of papers filed in court, and reporting on the results of motion hearings. Rau is "client-centered" in her management of the litigation.⁵⁴ If the landlord offers a settlement, Rau will counsel her client in a neutral and non-manipulative fashion, and would turn down even a generous settlement proposal (including one that would make Rau's life as a busy litigator much more manageable and provide her time for her many other client matters) if Pollard, for the reasons that were important to her, chose to continue on to trial.⁵⁵ Rau is respectful, kind, empathic, and thoughtful in her interactions with Pollard, while zealous and creative in her litigation activities in court and during her negotiations with the landlord's lawyer. She also refers Pollard to the family law unit of her legal aid organization (hoping there will be space available for a new client matter there⁵⁶), for assistance in enforcing her child support benefits. The colleague from the family law unit would engage in the

⁵³ In Massachusetts, and presumably in most if not all states, the facts recounted in the text would serve as the basis for claims against the landlord that, if successful, would not only offset the rent owed, but would defeat the landlord's claim to possession of the apartment. *See* MASS. GEN. LAWS ch. 186 § 14; ch. 239 § 8A (2015).

⁵⁴ *See* DAVID A. BINDER, PAUL BERGMAN, PAUL R. TREMBLAY & IAN WEINSTEIN, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (3d ed. 2012) (developing a client-centered approach to client counseling).

⁵⁵ The accepted client-centered model of counseling respects the choice of the client, not the preferences of the lawyer, to guide the lawyering process. *See id.* at 327-38; Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501 (1990). In legal services practice, however, the commitment to employ scarce, finite resources most effectively for a community of clients sometimes alters the ethical calculus. *See* Troy E. Elder, *Poor Clients, Informed Consent, and the Ethics of Rejection*, 20 GEO. J. LEGAL ETHICS 989 (2007); Paul R. Tremblay, *Toward a Community-Based Ethic for Legal Services Practice*, 37 UCLA L. REV. 1101 (1990).

⁵⁶ The odds are that there would not be space, but a resourceful housing lawyer will lobby and cajole her administration to try to find some help on the child support component of Pollard's legal quagmire. For a description of the difficulty to cover the need in the legal aid office's client community, see, e.g., Laura Abel, *Designing Access: Using Institutional Design to Improve Decisionmaking About the Distribution of Free Civil Legal Aid*, 7 HARV. L. & POL'Y REV. 61 (2013); Jeanne Charn, *Celebrating the "Null" Finding: Evidence-Based Strategies for Improving Access to Legal Services*, 122 YALE L.J. 2206 (2013).

same kind of careful, creative, and thorough litigation strategy in the Family Court proceedings to get as much child support as soon as possible for Pollard.

This fictional example illustrates high quality poverty-law practice. Given the demanding conditions under which most legal services lawyers work, the level of time and attention provided to Pollard in the story might be more an ideal than a reality,⁵⁷ but it is what a poverty law program would strive to provide. But, as López teaches us, the story just described is *regnant*. It is not rebellious. López sympathizes with but criticizes those who view the litigation craft of talented lawyers like Ehsan Rau as the measure of what good poverty lawyering ought to provide. The primary focus on lawyering strategies and short-term relief is not helpful in the long run.⁵⁸ The story shows Rau's professional control of the proceedings, and her development of the legal strategies based on her read of the substantive legal tactics rather than on a more creative plan that would account for Pollard's lived experience as a woman of color struggling to raise a family.⁵⁹ López also questions the prevailing legal services approach of treating Pollard as one individual client unconnected to the many women and men struggling in the local neighborhood to afford rents and to support their families.⁶⁰ Winning the lawsuit, or settling favorably with the landlord, López reminds us, does not alter the life situation of Pollard and her family in any meaningful way, and encourages Pollard's dependence on the professional assistance of an expert like Rau for future challenges.⁶¹ The short-term gain here deflects resources from a larger struggle, leaving subordinated persons from underserved communities no better off in the end.⁶² Poverty lawyers like Rau ought to reorient their practices to address in a more genuine way the conditions of oppression under which their clients live and work.⁶³

⁵⁷ See Gary Bellow & Jeanne Kettleon, *From Ethics to Politics: Confronting Scarcity & Fairness in Public Interest Practice*, 58 B.U. L. REV. 337 (1978) (describing the tensions inherent in providing civil legal services in the face of overwhelming need); Carrie Menkel-Meadow & Robert Meadow, *Resource Allocation in Legal Services: Individual Attorney Decisions in Work Priorities*, 5 LAW & POL'Y Q. 237, 238-39 (1983).

⁵⁸ LÓPEZ, *supra* note 2, at 191.

⁵⁹ *Id.* at 43.

⁶⁰ *Id.* at 56.

⁶¹ *Id.* at 49; see also Ben Depoorter, *The Upside of Losing*, 113 COLUM. L. REV. 817, 828 (2013) (“[B]y pursuing litigation-based strategies, movements become overly dependent on the professional advice of lawyers, and the agenda of social movements is softened and adjusted to existing legal conventions and thinking patterns.”).

⁶² LÓPEZ, *supra* note 2, at 49-53; Cummings & Eagley, *supra* note 39, at 481.

⁶³ See Ashar, *supra* note 5, at 224.

III. ENTER THE SUITS

“We simply can’t be effective if we see people’s problems through cramped legal doctrine.”⁶⁴

For our purposes let us accept López’s critique of regnant poverty lawyering. It is easy to do so; López is perceptive in his observations and trenchant in his critique of practices that many believed to be more effective than they in fact were.⁶⁵ How does that critique, and how do López’s proposals, fit the world of transactional lawyering on behalf of, or along with, entrepreneurs from underserved neighborhoods and communities?

As López does in *Rebellious Lawyering*,⁶⁶ let us imagine our own nonprofit law office, one committed to providing transactional legal services to low-income entrepreneurs, especially those who have not had access to educational, training, and mentoring opportunities that many startup founders have had, especially those connected to mainstream university settings. This law firm, probably nonexistent in 1992 but entirely plausible in 2016,⁶⁷ will seldom represent clients in disputes, in court or otherwise. It will offer what we can call “transactional legal services,” or TLS.⁶⁸ TLS includes the legal work necessary to make entities and institutions function effectively—including incorporation or similar entity formation, tax advice, intellectual property protection, regulatory guidance, and applications to the IRS for tax exemption where needed.⁶⁹

Let us call the firm Community Enterprise Legal Assistance Project (CELAP). It will see client projects of three types, and the differences among the client projects might be relevant for the following discussion.

⁶⁴ LÓPEZ, *supra* note 2, at 109.

⁶⁵ As noted above, the *Rebellious Lawyering* analyses and recommendations were not without their critics, especially as they addressed the experiences of poverty lawyers at street-level. See, e.g., Southworth, *supra* note 23; Tremblay, *Tragic View*, *supra* note 24. But despite some important disagreements and suggested refinements, support for the rebellious view is deep and wide in the literature, even if not necessarily in the day-to-day practice experiences of progressive lawyers.

⁶⁶ LÓPEZ, *supra* note 2, at Chapter 2.

⁶⁷ For a discussion of this kind of practice, see Ann Southworth, *Representing Agents of Community Economic Development: A Comment on Recent Trends*, 8 J. SMALL & EMERGING BUS. L. 261, 265-66 (2004); Tremblay, *supra* note 32, at 14-15.

⁶⁸ I used this designation in a recent article about this kind of practice. See Tremblay, *supra* note 32, at 12.

⁶⁹ Many law school clinics operate in exactly this fashion. For a description of the emergence and the mission of those clinics, see, e.g., Susan R. Jones & Jacqueline Lainez, *Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in U.S. Law Schools*, 43 WASH. U. J. L. & POL’Y 85, 86 (2013) (“since 1997 transactional legal clinics have grown exponentially”).

(1) CELAP assists “humbly resourced”⁷⁰ entrepreneurs from underserved and overlooked neighborhoods and backgrounds who hope to start successful small businesses, including street-level retail establishments, home-based crafts stores, or high-tech software programs that might attract the interest of angel investors or venture capitalists.⁷¹ CELAP works with emerging incubators and accelerators to learn of promising startup founders.⁷²

(2) CELAP also represents individuals or groups seeking to establish nonprofit organizations that will qualify for section 501(c)(3) tax exemption, and be authorized to receive foundation grants and tax-deductible donations.⁷³ Such clients commonly discover, while working on their own, that the complexity of the process through which the Internal Revenue Service (IRS) approves applications for section 501(c)(3) status requires the aid of a lawyer familiar with that practice.⁷⁴

(3) Finally, CELAP works with community-based organizations, usually connected to the families and workers with too little power or stability in their lives. A group of immigrant workers may seek the aid of CELAP to establish a workers cooperative, where workers may own a business collectively and organize the conditions of their work democratically.⁷⁵ Or a neighborhood tenants

⁷⁰ I learned of this lovely phrase from Jeff Ward at a recent conference dedicated to law firm incubator programs, “Access to Justice Through Incubator Programs and Non-Profit Law Firms,” Kansas City, MO, April 1-2, 2016.

⁷¹ An angel investor is an individual investor willing to invest his or her own capital in a company at its earlier stages for an ownership stake, often in the form of preferred stock or convertible debt. A venture capitalist, by comparison, is a professional investor who deploys third-party funds into relatively early-stage companies. See Darian M. Ibrahim, *The (Not So) Puzzling Behavior of Angel Investors*, 61 VAND. L. REV. 1405, 1413-22 (2008).

⁷² In Boston, the most prominent such incubator is Smarter in the City, located in Dudley Square in Roxbury, a neighborhood traditionally ignored and populated by families of color whose income is significantly below the norm of the Greater Boston area. See smarterinthecity.com.

⁷³ For an overview of the tax exemption process and the effect of Section 501(c)(3) status, see ALICIA ALVAREZ & PAUL R. TREMBLAY, INTRODUCTION TO TRANSACTIONAL LAWYERING PRACTICE 378-90 (2013).

⁷⁴ See Susan R. Jones, *Representing the Poor and Homeless: Innovations in Advocacy: Tackling Homelessness Through Economic Self-Sufficiency*, 19 ST. LOUIS U. PUB. L. REV. 385, 392-93 (2000) (describing the need for lawyers to assist with tax exemption complexity). The IRS recently simplified the application process for applying for tax-exempt status under Section 501(c)(3). See INTERNAL REVENUE SERVICE, FORM 1023-EZ. That simplicity is misleading, however, as applicants must still account for the same complex regulatory issues as with the traditional Form 1023. For a discussion of the new simplified process, see Manoj Viswanathan, *Form 1023-EZ and the Streamlined Process for the Federal Income Tax Exemption: Is the IRS Slashing Red Tape or Opening Pandora's Box?*, 163 U. PA. L. REV. ONLINE 89 (2014).

⁷⁵ See HARVARD TRANSACTIONAL CLINICS, A LEGAL OVERVIEW OF BUSINESS OWNERSHIP FOR IMMIGRANT ENTREPRENEURS IN MASSACHUSETTS, available at <http://clinics.law.harvard.edu/tlc/files/2015/09/TLC-Immigrant-Entrepreneurs-Overview.pdf>; Scott L. Cummings, *Developing Cooperatives as a Job Creation Strategy for Low-Income Workers*, 25 N.Y.U. REV. L. & SOC. CHANGE 181, 190 (1999); Peter Pitegoff, *Worker Ownership in*

group may seek guidance about what it means legally to operate as an unincorporated association.⁷⁶

The lawyers in CELAP share the same commitments to progressive lawyering causes and to social justice as the lawyers whom López describes in *Rebellious Lawyering*. The question to be explored here is how they might embrace López's suggestions, and how they might respond to López's criticisms, in their transactional practices. Put another way, does the want of a dispute, or a "good fight,"⁷⁷ affect how these lawyers interact with their less-powerful clients? The answer to that question is yes. As the following discussion will show, TLS attorneys do, and ought to, act in ways that appear far more regnant than López would encourage in the dispute and struggle contexts, but that pattern or practice is not at all inconsistent with the aspirations of the rebelliousness credo.

This Part will address startup, entrepreneurial work. That kind of business-focused lawyering activity seems to be the least connected to the social justice efforts López wrote about. Part IV will then explore the rebellious approach as it applies to more collective lawyering for nonprofits and community organizations.

It is easy, of course, to agree that the CELAP lawyers ought to treat their clients with the respect and compassion that López found wanting in the busy, harried work lives of poverty lawyers.⁷⁸ And, in fact, the worry about bureaucracy, mass-processing of client requests, and treatment of client needs as fungible and unoriginal, all so common in observations of overwhelmed inner-city legal aid organizations,⁷⁹ is less salient in organizations like CELAP, because corporate work is less draining, and has fewer transaction costs (such as long, tiring stints in overcrowded courts), than poverty-law litigation.⁸⁰ En-

Enron's Wake—Revisiting a Community Development Tactic, 8 J. SMALL & EMERGING BUS. L. 239 (2004).

⁷⁶ See LÓPEZ, *supra* note 2, at 300 (members of the Rosario community group wonder about their status and governing processes); Diamond, *supra* note 31, at 69.

⁷⁷ LÓPEZ, *supra* note 2, at 103 (describing one of the legal services lawyers in his accounts as loving "a good fight" on behalf of her clients).

⁷⁸ *Id.* at 87-126 (describing brusque, impersonal interactions between the poverty law office staff and attorneys and their clients).

⁷⁹ See Alfieri, *supra* note 51; Menkel-Meadow & Meadow, *supra* note 57, at 242.

⁸⁰ Much has been written about the stresses of legal representation of the poor. See, e.g., Abel, *supra* note 56, at 618 ("[I]t is necessary to accept burnout as an inevitable concomitant of the conditions of full-time salaried legal aid work: high case loads, great emotional intensity, and repeated defeats."). Reports of transactional work tend to have a more pleasant quality. See, e.g., Rebecca B. Rosenfeld, *The Examined Externship Is Worth Doing: Critical Self-Reflection and Externship Pedagogy*, 21 CLIN. L. REV. 127, 153 (2014) (an externship student reports, "Makes me feel like I'm working in happy law helping incorporate a nonprofit arts project").

preneurs tend to be confident, creative, and resourceful souls,⁸¹ and their ambitions might fit more comfortably with those of the lawyers who work for them. The class, educational, and occupational differences between the lawyers whom López describes and criticizes in *Rebellious Lawyering* and the clients and community members those lawyers seek to aid likely account, at least in part, for the lack of respect traditional poverty lawyers show for their counterparts.⁸² When those same lawyers work with entrepreneurs whose business ideas are developed and creative enough to warrant CELAP's offering its free services to them,⁸³ the respect the lawyers experience for their clients just might be less conflicted by implicit biases.⁸⁴

It also easier, in the CELAP setting, for the lawyers to play a less dominant or leadership role in the larger client enterprise than the experiences López writes about and criticizes. A central critique within *Rebellious Lawyering* is lawyers' tendency to perceive client struggles through the lens of the legal litigation doctrines they have been trained to master, and to orchestrate strategies with little collaborative input from members of the affected community.⁸⁵ Subject to an important exception or adjustment I will describe next, this is simply not a worry in the TLS context, where the lawyers fill important, identified needs of the entrepreneurs. TLS is in fact more genuinely "rebellious," in a rather inherent way,⁸⁶ than the practices of the law-

⁸¹ See Susan R. Jones, *Supporting Urban Entrepreneurs: Law, Policy, and the Role of Lawyers in Small Business Development*, 30 W. NEW ENG. L. REV. 71, 82 (2007); Hannu Littunen, *Entrepreneurship and the Characteristics of the Entrepreneurial Personality*, 6 INT'L J. ENTREPRENEURIAL BEHAV. & RES. 295 (2000).

⁸² See Elizabeth L. MacDowell, *Reimagining Access to Justice in the Poor People's Courts*, 22 GEO. J. ON POVERTY L. & POL'Y 473 (2015); Ascanio Piomelli, *Cross-Cultural Lawyering by the Book: The Latest Clinical Texts and a Sketch of a Future Agenda*, 4 HASTINGS RACE & POVERTY L.J. 131 (2006).

⁸³ Much like any free or subsidized legal services practice, CELAP must engage in some priority-setting or triage scheme to ensure that its limited supply of lawyering talent and time gets used in the most effective way. For a discussion of resource allocation complications in the provision of free legal services, see, e.g., Elder, *supra* note 55; Paul R. Tremblay, *Acting "A Very Moral Type of God": Triage Among Poor Clients*, 67 FORDHAM L. REV. 2475 (1999).

⁸⁴ Even if the lawyers and entrepreneurs share more characteristics than is typically the case in poverty lawyering, the power of implicit bias regarding race and gender cannot be underestimated. See generally Jerry Kang & Kristin Lane, *Seeing Through Colorblindness: Implicit Bias and the Law*, 58 UCLA L. REV. 465 (2010). See also Deborah J. Cantrell & Kenneth Sharpe, *Practicing Practical Wisdom*, 67 MERCER L. REV. 331, 348-50 (2016) (describing teaching about implicit bias).

⁸⁵ LÓPEZ, *supra* note 2, at 72-73.

⁸⁶ If progressive lawyers, learning from López and wishing to accept his critiques, make efforts to adjust their standard practices to account for his suggestions, then those adjusted practices will not be second nature, but must be intentional and monitored. See LÓPEZ, *supra* note 2, at 28-29. The point in the text is that, with TLS involving entrepreneurs, the ceding of direction for the enterprise comes quite naturally, as the enterprise is a mix of

yers working with subordinated clients who are “taking on together society’s ‘wicked’ economic, social, and political problems.”⁸⁷ Similarly, recognizing the empowerment focus within progressive lawyering critiques,⁸⁸ the TLS practices, if successful, will aid in the development of financial autonomy, along with assets and capital (especially relevant sources of power⁸⁹), within the communities that possess too little of those resources.⁹⁰

There is, however, one critical way in which the TLS representation model often rejects a central premise of the rebelliousness credo, and for good reason, and without sacrificing the goals of that credo. López writes, speaking for progressive lawyers working within the struggle for social justice, that “[w]e simply can’t be effective if we see people’s problems through cramped legal doctrine.”⁹¹ Regnant lawyers use the law instrumentally, and doctrinally. Rebellious lawyers will resist that conventional orientation, pursue solutions that are grounded in community norms and responsive to long-term community needs, and nurture the rewards of lay lawyering tactics.

Entrepreneurship lawyers, like those at CELAP, even if they agree with López’s critique, cannot accept his denunciation of cramped legal doctrine. These lawyers live and breathe cramped legal doctrine. TLS lawyers will seldom find that the lay lawyering insights of the rebelliousness project will accomplish the limited and discrete purposes for which the lawyers were retained by their clients. This

legal and business strategies, with the latter far more dominant and central.

⁸⁷ Karen Tokarz, Nancy L. Cook, Susan Brooks & Brenda Bratton Blom, *Conversations on “Community Lawyering”: The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL’Y 359, 365 (2008). The authors define “wicked” as “akin to that of ‘malignant’ (in contrast to benign) or ‘vicious’ (like a circle) or ‘tricky’ (like a leprechaun) or ‘aggressive’ (like a lion, in contrast to a lamb).” *Id.* (quoting Horst Rittel & Melvin Webber, *Dilemmas in a General Theory of Planning*, 4 POL’Y SCI. 155, 162 (1973)).

⁸⁸ A literature search shows that at least 360 published articles cite *Rebellious Lawyering* and discuss empowerment. (Westlaw search, June 20, 2016.) For two such examples, see, e.g., Quigley, *supra* note 23; Janell Smith & Rachel Spector, *Environmental Justice, Community Empowerment and the Role of Lawyers in Post-Katrina New Orleans*, 10 N.Y. CITY L. REV. 277 (2006).

⁸⁹ Hauber, *supra* note 30, at 13.

⁹⁰ For a discussion of the role that entrepreneurship plays in the development of power within underserved communities, see Dyal-Chand & Rowan, *supra* note 37; Hauber, *supra* note 30, at 14; Jones, *supra* note 36; Louise G. Trubek, *The Worst of Times . . . and the Best of Times: Lawyering for Poor Clients Today*, 22 FORDHAM URB. L.J. 1123, 1128-29 (1995). See also Regina Austin, “An Honest Living”: *Street Vendors, Municipal Regulation, and the Black Public Sphere*, 103 YALE L.J. 2119 (1994) (on the role that underground business plays in the local economy of underserved neighborhoods); Anthony Taibi, *Banking, Finance, and Community Economic Empowerment: Structural Economic Theory, Procedural Civil Rights, and Substantive Racial Justice*, 107 HARV. L. REV. 1463 (1994) (emphasizing the importance of economic capital development within minority and underserved communities).

⁹¹ LÓPEZ, *supra* note 2, at 109.

seemingly-regnant approach risks little of the harms that López perceives in the dispute-resolution arena. Here's why: Entrepreneurs need TLS lawyers to serve an essential, technical function in order to ensure that their businesses succeed.⁹² They come to lawyers not for leadership, nor to cede control of their enterprise to professionals who might not share their world view or values, but instead to exploit the specialized expertise of the TLS counsel. The power imbalances in these relationships are minimized, and the strategic control is almost reversed from what López observes in the community struggles he describes. In the TLS universe, lawyers will often provide necessary, expert guidance to the entrepreneur clients, and then step out of the way.

Consider the following example. Imagine that Allyson Pollard, the client whom we met above,⁹³ comes to CELAP not because of her having received eviction papers, but instead because she has begun to explore the establishment of a small business. Pollard has been working at a local shared workspace, with a colleague she met at her community college, on a smartphone app that she believes will effectively manage the constant stream of emails that everyone seems to suffer through.⁹⁴ The business mentors she has been consulting have advised her to obtain, if possible, legal advice about the copyright implications of her software program,⁹⁵ the trademark rights she might need to establish in the business name she will use,⁹⁶ the possibility of establishing an entity through which she might operate the business and protect herself against lawsuits,⁹⁷ and a founders agreement that she might need in order to settle the respective interests in the business between Pollard and her community college colleague.⁹⁸

Each one of these issues calls for precisely the kinds of technical, narrow, and expertise-driven lawyering services about which López worries. Each one of these issues calls for at least some qualities of regnant lawyering. And each one of these issues could be very important to the success of Ms. Pollard's business.⁹⁹ Her business may not

⁹² See Lynnise Pantin, *Deals or No Deals: Integrating Transactional Skills in the First Year Curriculum*, 41 OHIO N.U. L. REV. 61 (2104); Southworth, *supra* note 12, at 222-23.

⁹³ See text accompanying notes 52-56 *supra*.

⁹⁴ I used a similar example in a recent article about the provision of TLS to low-wealth entrepreneurs. See Tremblay, *supra* note 32, at 34.

⁹⁵ This is a common legal matter for a startup founder, and especially a high tech enterprise founder, to address as she begins her business. See STEPHEN F. REED & ESTHER S. BARRON, *ENTREPRENEURSHIP LAW: CASES AND MATERIALS* 127-29 (2013).

⁹⁶ *Id.* at 102-17.

⁹⁷ *Id.* at 57-83.

⁹⁸ *Id.* at 89.

⁹⁹ Observers have noted the critical role legal guidance can play in the success of a small startup business. See Abraham J.B. Cable, *Startup Lawyers at the Outskirts*, 50 WIL-

ultimately succeed,¹⁰⁰ but its chances are increased if she can own and protect the intellectual property she produces, avoid infringing on others' IP rights, comply with state and local requirements to maintain her business in good standing,¹⁰¹ and successfully negotiate or mediate the co-ownership of the enterprise with her partner or co-founder.

Most importantly, the CELAP lawyers serve many of the more essential goals of rebellious lawyering in the work they do for Ms. Pollard, even as they operate with the “cramped legal doctrine” López criticizes. The work of CELAP fosters the development of power within the client community in a palpable, if individualized, way. The evidence is mixed about whether entrepreneurship strategies within subordinated communities can meaningfully affect the power dynamics and the long-range health of those neighborhoods.¹⁰² That debate notwithstanding, progressive lawyers' support of those residents of underserved communities whose enterprises will contribute to the local economy—and, of course, to their own financial and capital interests—is welcome.

The concern about lawyers “undermin[ing] the leadership and stifl[ing] the grassroots energies”¹⁰³ of the cause is not a worry with TLS services. Some risks may arise in TLS work that a lawyer will impose her judgments about, say, the IP or choice-of-entity considerations the entrepreneur client confronts.¹⁰⁴ But that, frankly, is not Ló-

LAMETTE L. REV. 163, 167-169 (2014); Viktor Mayer-Schönberger, *The Law as Stimulus: The Role of Law in Fostering Innovative Entrepreneurship*, 6 I/S: J. L. & POL'Y FOR INFO. SOC'Y 153, 175-181 (2010); SEAN M. O'CONNOR, HOW TO BUILD IPR-FOCUSED ENTREPRENEURIAL LAW & BUSINESS CLINICS TO ASSIST REGIONAL ECONOMIC DEVELOPMENT AROUND THE GLOBE 5 (2008), available at http://iipi.org/wp-content/uploads/2010/07/How_to_Build_IP-Focused_Law_Clinics.pdf (last visited June 24, 2016) (microentrepreneurs who receive technical assistance appear to have greater business creation, survival and growth rates).

¹⁰⁰ “Nine out of 10 startups fail” Erin Griffith, *Why Startups Fail, According to Their Founders*, FORTUNE MAG. (Sept. 25, 2014), <http://fortune.com/2014/09/25/why-startups-fail-according-to-their-founders/>. See also Deborah Gage, *The Venture Capital Secret: 3 Out of 4 Start-Ups Fail*, WALL ST. J. (Sept. 20, 2012), <http://www.wsj.com/articles/SB10000872396390443720204578004980476429190>.

¹⁰¹ Each state requires business entities to register and pay certain fees and taxes, and will revoke the charter of a business that fails to comply with those technical requirements. See, e.g., William F. Griffin, *Organizing the Corporation*, in A PRACTICAL GUIDE TO MASSACHUSETTS CLOSELY HELD BUSINESS ORGANIZATIONS (2015) (covering those requirements for corporations in Massachusetts).

¹⁰² See Dyal-Chand & Rowan, *supra* note 37, at 861-62 (examining research on the success of entrepreneurship as a poverty-fighting strategy, and reporting the pessimistic results of that work).

¹⁰³ Sarat & Scheingold, *supra* note 42, at 12.

¹⁰⁴ See Julie D. Lawton, *Who Is My Client? Client-Centered Lawyering with Multiple Clients*, 22 CLIN. L. REV. 145 (2015) (describing the client-centered commitment within transactional lawyering); Alicia E. Plerhopes, *Risks, Goals, and Pictographs: Lawyering to the Social Entrepreneur*, 19 LEWIS & CLARK L. REV. 301, 310 (2015) (describing the same).

pez's real worry. López's deeper objection to regnant lawyering is that the enterprise will, in essence, become the lawyer's enterprise, without genuine direction from or collaboration with the client or her community.¹⁰⁵ Even if the CELAP lawyer recommends expertly the choice of entity, or the proper trademark vehicle, those misjudgments (if they indeed are misjudgments¹⁰⁶) do not deprive the entrepreneur of the control of the enterprise in a significant way. With most entrepreneurs, legal details are items on a long and complicated punch list, necessary (and perhaps annoying) steps among many non-legal business and marketing considerations needed to be accomplished in order to move the commercial venture ahead.¹⁰⁷ The client here needs the lawyer for her expertise, and that's all.

Even accepting the value of lay lawyering strategies and greater commitment to the centrality of client narrative in dispute resolution contexts, as López¹⁰⁸ and others¹⁰⁹ have persuasively argued, it would be a bad thing for the startup enterprise, and progressive observers ought to criticize the practice, if the lawyer ceded expertise on the technical, punch-list items within the TLS context to the client. In this setting, the professional expertise is essential.

In one significant respect, though, the TLS lawyers depart from the López rebelliousness mission in a perhaps regrettable fashion. *Rebellious Lawyering* includes a commitment to mobilization and collective action, to addressing legal issues not singly or in isolated fashion, but within the fabric of the community in which the lawyer's clients live and work.¹¹⁰ As one commentator writes, "Grassroots lawyers

¹⁰⁵ LÓPEZ, *supra* note 2, at 28-29.

¹⁰⁶ The client-centered commitment suggests that in settings where multiple alternatives are lawfully available, and the client appreciates the differences among those alternatives, there is little reason for the lawyer to influence the client's choice other than through an explicitly comparative assessment of the options. See BINDER, ET AL., *supra* note 54, at 327-38; Lawton, *supra* note 104, at 149-50; Nancy D. Polikoff, *Am I My Client?: The Role Confusion of a Lawyer Activist*, 31 HARV. C.R.-C.L. L. REV. 443, 446 (1996). The proper choice of an operating entity for a business, or of the trademark registration avenues, seems to fit that paradigm. But, as some observers have noted, it is impossible for lawyers to avoid influencing those client choices, and it is preferable to acknowledge that inevitability and to work with it. See, e.g., William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Reagan Era*, 48 U. MIAMI L. REV. 1099 (1994).

¹⁰⁷ See Southworth, *supra* note 9, at 1134-40.

¹⁰⁸ LÓPEZ, *supra* note 2, at 38-44.

¹⁰⁹ See, e.g., JoNel Newman, *Identity and Narrative: Turning Oppression into Client Empowerment in Social Security Disability Cases*, 79 ALB. L. REV. 373 (2016) (emphasizing the importance of narrative in disability benefits work); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990) (offering a compelling story of a lawyer's likely distortion of a client's story in a welfare hearing).

¹¹⁰ LÓPEZ, *supra* note 2, at 24, 32; see also Anthony V. Alfieri, *The Antinomies of Pov-*

might [claim] that their real client is building community power.”¹¹¹ Lawyering for entrepreneurs—and to be distinguished here from lawyering for community or worker groups, or lawyering for founders of nonprofit organizations, discussed below—involves assisting ambitious individuals (or small groups) with their personal, and at times idiosyncratic, business goals. Perhaps those business goals include community economic development; if not, then perhaps that business activity generates community economic development notwithstanding the goals of the founder. But it remains true that TLS inherently involves assisting in individual economic gain. It has very little collective identity.

I do not intend to underestimate the implications of this departure from the López critiques, and from the prevailing progressive lawyering connection to mobilization.¹¹² Perhaps one might argue that progressive lawyers ought to eschew representation of individual for-profit entrepreneurs, and offer services only to collective transactional enterprises connected to community initiatives, or to entrepreneurs pursuing social enterprises. Several commentators have acknowledged the social justice advantages of connecting startup businesses to neighborhood needs or systemic improvement,¹¹³ and others have argued that community economic development (CED) initiatives fare best when connected to mobilization.¹¹⁴ And entrepreneurship representation does incorporate aspects of the disfavored instrumental views of the law exemplified within legal liberalism¹¹⁵ and the “myth of

erty Law and a Theory of Dialogic Empowerment, 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1988); Depoorter, *supra* note 61, at 828; Karen Gargamelli & Jay Kim, *Common Law’s Lawyering Model: Transforming Individual Crises into Opportunities for Community Organizing*, 16 CUNY L. REV. 201 (2012); Quigley, *supra* note 23.

¹¹¹ Scott L. Cummings, *How Lawyers Manage Intragroup Dissent*, 89 CHI.-KENT L. REV. 547, 553 (2014).

¹¹² See Scott L. Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor*, in CAUSE LAWYERS AND SOCIAL MOVEMENTS, *supra* note 42, at 302.

¹¹³ See, e.g., Alvarez, *supra* note 29, at 1269 (acknowledging that CED clinics must address poverty); Ashar, *supra* note 5, at 211 (resisting recent calls for technique-focused lawyering and urging connecting proficient lawyering with broader social justice goals); Jones, *supra* note 36, at 224 (lawyers for microenterprises can achieve rebellious lawyering goals by crafting “alliances within a broader business community”). Cf. Alizabeth Newman, *Bridging the Justice Gap: Building Community by Responding to Individual Need*, 17 CLIN. L. REV. 615 (2011) (developing a conception she calls “Collaborative Individual Law,” where individual client representation connects to broader community needs).

¹¹⁴ See Cummings, *supra* note 112; Dyal-Chand & Rowan, *supra* note 37. Cf. Anthony V. Alfieri, *Fidelity to Community: A Defense of Community Lawyering*, 90 TEX. L. REV. 635, 653-54 (2012) (reviewing W. BRADLEY WENDEL, *LAWYERS AND FIDELITY TO LAW* (2010)) (arguing that “fidelity-to-law” (which, for our purposes, resembles López’s “cramped legal doctrine”) “reveals not legality and legitimacy but racialized power, repressive order, and authoritarian impulse” when implemented in impoverished communities).

¹¹⁵ See Ashar, *supra* note 1, at 1920; William H. Simon, *Solving Problems vs. Claiming*

rights.”¹¹⁶ William Simon reminds us that progressive lawyers make value judgments by their choice of clients,¹¹⁷ so a more rebellious stance would support that triage.

I suggest two responses to that concededly powerful argument. First, some progressive lawyers will continue to represent entrepreneurs from underserved communities, so it is important to assess the ethical stance of those lawyers as they work with their clients. Second, that continued representation remains a good thing, notwithstanding the likely long-term benefits of a more collective agenda. TLS on behalf of humbly-resourced entrepreneurs not only assists in the establishment of some tangible power that might otherwise elude low-income clients,¹¹⁸ but, importantly, it is what the members of the community have requested. It is a challenging posture, in the pursuit of rebellious lawyering, to resist what some members of a client community need because the lawyer understands that other avenues would be more fitting of a larger mission.¹¹⁹ In perhaps small and incremental ways, TLS on behalf of underserved entrepreneurs can help accomplish much of what López hopes rebellious lawyers would achieve in their work with subordinated communities.

IV. COLLECTIVE TRANSACTIONAL WORK

A. *The Benefits of Collective Transactional Work*

Much progressive transactional lawyering occurs on behalf of “collectives”—groups or entities that pursue a community-based mission. This Part distinguishes the collectives from the entrepreneurship work discussed in Part III, to explore how the lessons from the *Rebellious Lawyering* project apply to lawyers providing transactional services to those group or organizational clients.

It is apparent that collective transactional work has just about all of the rebellious qualities just described regarding lawyering for entrepreneurs, but without the one significant drawback of the entrepreneurship representation, that is, its individualistic qualities.¹²⁰ Lawyers

Rights: The Pragmatist Challenge to Legal Liberalism, 46 WM. & MARY L. REV. 127 (2004).

¹¹⁶ Mark Neal Aaronson, *Representing the Poor: Legal Advocacy and Welfare Reform During Reagan's Gubernatorial Years*, 64 HASTINGS L.J. 933, 1075 (2013); Southworth, *supra* note 23.

¹¹⁷ Simon, *supra* note 106, at 1102.

¹¹⁸ See Tremblay, *supra* note 32, at 19.

¹¹⁹ See Rebecca Sharpless, *More than One Lane Wide: Against Hierarchies of Helping in Progressive Legal Advocacy*, 19 CLIN. L. REV. 347, 349 (2012) (defending individual representation of clients in need). See also Newman, *supra* note 109 (accepting the need to win disability hearings with conventional legal strategy while at the same time respecting client narrative).

¹²⁰ See text accompanying notes 110-12 *supra*.

who provide transactional legal services to nonprofits, to less-structured community groups, and to worker cooperatives fit comfortably within López's vision of effective practice that advances collective goals and follows the wisdom of client groups.¹²¹

Otherwise, the consideration of López's proposals as applied above to entrepreneurs operates just as well in the context of collective clients needing business, organizational, compliance, and other transactional legal services. The defense of the lawyers' reliance on sophisticated legal doctrine applies equally well to groups needing assistance with creating and sustaining a tax-exempt nonprofit organization, or an effective worker cooperative, or a benefit corporation.¹²² The founders and leaders of collectives tend, like private business entrepreneurs, to be sophisticated, energetic individuals who are less apt to succumb to the perceived professional expertise of the group's counsel.¹²³ The collective projects needing the legal assistance, almost by definition, have development of community power or enhancement of community life as their mission. As Patience Crowder has observed, "impact transactions" may accomplish many of the goals the regnant lawyers seek through their impact litigation efforts, but with far fewer of the criticisms that impact litigation strategies have earned.¹²⁴

Transactional lawyering on behalf of collectives does, however, present two noteworthy challenges to an effective rebellious stance, challenges arising from the collective nature of the work and therefore not present in the lawyering for individual entrepreneurs. The first challenge is that created, within some collective transactional lawyering settings, by the scale and complexity of the collective project. The second challenge is one we might label the "introvert complication"—that is, the need to attend to silent (or silenced) collective members. Let us examine each in turn.

¹²¹ See Stacy Brustin, *Expanding Our Vision of Legal Services Representation—The Hermanas Unidas Project*, 1 AM. U. J. GENDER & L. 39 (1993); Peter Margulies, *Representation of Domestic Violence Survivors as a New Paradigm of Poverty Law: In Search of Access, Connection and Voice*, 63 GEO. WASH. L. REV. 1071, 1100 (1995); Newman, *supra* note 109.

¹²² See Ball, *supra* note 16; Carmen Huertas-Noble, *Promoting Worker-Owned Cooperative as a CED Empowerment Strategy: A Case Study of Colors and Lawyering in Support of Participatory Decision-Making and Meaningful Social Change*, 17 CLIN. L. REV. 255 (2010).

¹²³ See Hauber, *supra* note 30, at 13-15; Southworth, *supra* note 9, at 1158-59.

¹²⁴ See Patience A. Crowder, *Impact Transaction: Lawyering for the Public Good Through Collective Impact Agreements*, 49 IND. L. REV. 621 (2016). See also Praveen Kosuri, "Impact" in 3D—Maximizing Impact Through Transactional Clinics, 18 CLIN. L. REV. 1 (2011) (advocating for impact strategies using transactional means); Alicia E. Plerhopes, *Representing Social Enterprise*, 20 CLIN. L. REV. 215 (2013) (describing the social goals achievable through corporate lawyering).

B. Collective Transaction Complexity and the Recurrence of Lawyer Dominance

Commentators have observed that the concern about lawyer dominance, so prevalent in observations about progressive lawyers' work with subordinated clients, is diminished with transactional lawyering projects, for two reasons. First, the transactional clients, operating a business or managing a group enterprise, tend to be more independent and less susceptible to lawyer influence.¹²⁵ Second, and more critically, the nature of the enterprises on which transactional lawyers provide assistance are such that it is simply harder for lawyers to assume control. We observed this above in the context of startup entrepreneurs,¹²⁶ and the same analysis often applies to the functioning of a nonprofit organization, a worker cooperative, or a community group with its public benefit mission.

However, some collective enterprises needing transactional legal assistance are so firmly tethered to intricate and obscure substantive law and procedure that the client or group leaders, notwithstanding their sophistication and independence, end up marginalized. Daniel Shah observed this reality years ago,¹²⁷ and there is little reason to believe that the subjects about which he wrote then—CED campaigns involving financing, zoning, and private-public partnership challenges—are any less daunting or legally-complex today.¹²⁸ As Shah describes it, progressive lawyers engaged in CED work necessarily control the projects' agendas without any meaningful or non-token input from community members or leaders, simply because of the increasing technical sophistication of the projects.¹²⁹ Not all collective transactional legal services will have that level of complexity; CED and affordable housing work in particular seem susceptible to that complication. But in those settings, the criticisms López offered of the litigators will apply with equal force to the transactional attorneys, who will find themselves as strategic leaders of the client groups, at least on the legal front.

It is not immediately apparent what the response to the Shah critique ought to be. In litigation or struggles-against-injustice contexts, López offered plausible alternative strategies to the regnant lawyers who were inadvertently controlling client agendas. López pointed out

¹²⁵ Hauber, *supra* note 30, at 13-15; Southworth, *supra* note 12, at 1154.

¹²⁶ See discussion *supra* at notes 85-90.

¹²⁷ Shah, *supra* note 23, at 256.

¹²⁸ For a more recent example of transactional lawyer complexity and the lawyers' responses to it, see Sheila R. Foster & Brian Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CALIF. L. REV. 1999 (2007).

¹²⁹ Shah, *supra* note 23, at 239.

that the lawyers' strategic judgments about litigation goals and tactics were not necessarily any more effective than those developed through collaboration with the affected clients and community members.¹³⁰ And he suggested that courts, the forums where lawyers were most comfortable and therefore most in control, were hardly the only, or the best, places in which to seek the resolutions or the justice the clients pursued.¹³¹

For transactional lawyers engaged in large-scale CED or affordable housing ventures, such creative alternatives are more limited. Neither of the two responsive stances suggested by López applies easily to the complex CED transactions Shah described. The visions and long-range aims within complex transactional CED projects need to be client-driven,¹³² but the implementation of the strategic plans are often dependent on technical structures for which the transactional attorneys have the necessary sophistication and training. The lawyers' authority over those matters cannot easily be delegated away or shared, even if regular consultation with and input from clients is beneficial and productive. And alternative forums for the clients' affordable housing or CED goals may not be available. Shah seemed to recognize this inevitability.¹³³ But his proposals—urging progressive lawyers to emphasize community education, lay lawyering, and grassroots mobilization—appear to beg the deeper questions he so insightfully exposed.¹³⁴

Therefore, it might be unavoidable that progressive transactional attorneys advancing complex CED projects on behalf of collective clients will control the representation more deeply than those lawyers are likely to do when representing entrepreneurs, not because those lawyers have engrained practice patterns deserving of criticism, but simply because of the nature of the work. If the projects themselves are the product of collaborative community engagement, then that lawyer control seems a necessary byproduct of the enterprise. If the projects are generated through the lawyers' influence or leadership, the attorney domination warrants the same criticism that López directs toward the regnant practitioners in the litigation arena.

¹³⁰ LÓPEZ, *supra* note 2, at 50-51. Some observers saw limitations to this stance. *See, e.g.*, Mansfield, *supra* note 23, at 898; Peter H. Schuck, *Public Law Litigation and Social Reform*, 102 *YALE L.J.* 1763, 1782-83 (1993).

¹³¹ LÓPEZ, *supra* note 2, at 60-61. On this score, López has few, if any, dissenters among progressive commentators.

¹³² *See* Ball, *supra* note 16, at 30-31; Shah, *supra* note 23, at 233-34.

¹³³ Shah, *supra* note 23, at 235.

¹³⁴ Shah's central critique uncovered a deep tension within progressive CED practice, but his recommendations, while each capturing a valuable sentiment within rebellious lawyering, did not address how the projects might advance without the ongoing leadership of the legal, planning, and accounting teams.

C. *Silent Members of the Collective*

There is a second way in which progressive transactional lawyering for collective clients might achieve the *Rebellious Lawyering* goals less well than work with startup entrepreneurs and small businesses. This disadvantage may also be an inevitable byproduct of the nature of the collective enterprises. It is the “introvert complication.”

Here’s the worry: Transactional work with collective clients frequently leaves some members of that collective with little voice, and little power. That is usually not a concern in the entrepreneurship sphere. Entrepreneurial representation accomplishes suitably the *Rebellious Lawyering* aim of enhancing client power and independence.¹³⁵ Collective representation, done well, often achieves that goal for the collective, but the transactional lawyer has limited tools available to ensure that the voices of all members of the collective might be heard.¹³⁶ This is not a concern unique to transactional lawyering, of course; it has been the topic of some debate within the struggle-against-injustice context.¹³⁷

This is not the place to rehearse the intricate challenges for progressive lawyers representing community-based groups, but a few observations seem warranted. In collective transactional representation, the lawyer works on behalf of the group *qua* group, or the formal entity if one exists.¹³⁸ The client is the collective, and expressly not any of the individual members.¹³⁹ The lawyer develops strategies with and follows the lead of the “duly authorized constituents”¹⁴⁰ of the organizational client, typically the leadership and/or the founders.¹⁴¹ While the membership ought to be stronger, and more powerful, as a result of the group’s having formed,¹⁴² there remains the distinct risk that some group members will not be heard or represented faithfully by the leadership.¹⁴³ The progressive transactional lawyer will craft

¹³⁵ Sisak, *supra* note 12, at 878-29; Southworth, *supra* note 9, at 218-220.

¹³⁶ See Diamond & O’Toole, *supra* note 31, at 516; Stephen Ellmann, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers’ Representation of Groups*, 78 VA. L. REV. 1103 (1992).

¹³⁷ See, e.g., Eduardo R.C. Capulong, *Client Activism in Progressive Lawyering Theory*, 16 CLIN. L. REV. 109, 122-23 (2009); Deborah L. Rhode, *Public Interest Law: The Movement at Midlife*, 60 STAN. L. REV. 2027, 2064-67 (2008); Tokarz, et al., *supra* note 87.

¹³⁸ See Bennett, *supra* note 31, at 72; Paul R. Tremblay, *Counseling Community Groups*, 17 CLIN. L. REV. 389 (2010).

¹³⁹ MODEL RULES OF PROF’L CONDUCT R. 1.13 (2013).

¹⁴⁰ *Id.* at R. 1.13(a); Bennett, *supra* note 31, at 90; Lawton, *supra* note 104, at 158.

¹⁴¹ Lawton, *supra* note 104, at 147; Tremblay, *supra* note 138, at 407-09.

¹⁴² Alfieri, *supra* note 110, at 706-09; Cummings & Eagley, *supra* note 39, at 484; Michael Grinthal, *Power with: Practice Models for Social Justice Lawyering*, 15 U. PA. J. L. & SOC. CHANGE 25, 34 (2011).

¹⁴³ Ellmann, *supra* note 135, at 1152; Robin Jacobs, *Building Capacity Through Community Lawyering: Circumstances of the Leaders, Small Community Associations, and Their*

representational and counseling strategies to account for the risk that leadership might not faithfully mirror the views and aspirations of membership, but those strategies will be imperfect at best.¹⁴⁴

Given this Essay's goal of assessing the quality of progressive transactional lawyering when viewed through the lens of the *Rebellious Lawyering* critique, this disempowerment concern within collective representation is not an example of a practice pattern that, like López's stance vis-à-vis regnant lawyering, ought to be rethought. Lawyers for collectives must be attentive to their responsibility to ensure the fidelity of leadership to the broader group's sentiments and objectives, even if lawyers need not ensure that the group is fully democratic in its management.¹⁴⁵ Those commitments are, it seems, inherent in the nature of group representation. That complication having been acknowledged, the *Rebellious Lawyering* assessment of collective transactional representation would be quite favorable. The transactional assistance, while conventionally legal and often very technical, achieves the goals of client power development and community engagement with a lessened worry of lawyer dominance or distortion.

CONCLUSION

Gerald López's disruptive criticisms of progressive lawyering practices apply only imperfectly to the work of lawyers offering transactional legal services to members of underserved communities. Transactional lawyers by the very nature of their work tend to enhance client power, respect the client's control and autonomy over the projects for which the client has sought professional assistance, and otherwise nurture the ends that López championed. It is true that the work of the transactional lawyers looks quite regnant, but that it not a source of concern. A larger concern is the individualistic quality of transactional practice, and especially of lawyering on behalf of for-profit entrepreneurs. That reality will at times fail to advance mobilization efforts in support of social change, but the benefits of entrepreneurship practice justify progressive lawyers' engagement with startup founders living and working in underserved neighborhoods.

Attorneys, 24 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 29, 50-51 (2015). This is similar to, but distinct from, the accompanying challenge of intragroup dissent within public interest practice. See Cummings, *supra* note 111.

¹⁴⁴ For a discussion of these risks and tensions, see Diamond & O'Toole, *supra* note 31, at 529; Ellmann, *supra* note 135, at 1142-43. See also Alicia E. Plerhoples, *Social Enterprise as Commitment: A Roadmap*, 48 WASH. U. J. L. & POL'Y 89, 126-27 (2015) (reviewing the use of social enterprise structures to encourage inclusion of voices otherwise silenced).

¹⁴⁵ Diamond, *supra* note 31, at 103.

